

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

ORDER

- against -

13-CR-149(KAM)

MICHAEL GARRETT,

Defendant.

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MATSUMOTO, United States District Judge:

On March 8, 2016, counsel for Michael Garrett ("Mr. Garrett")¹ filed a letter motion to vacate Mr. Garrett's trial conviction, dismiss the indictment against him, and vacate the court's November 23, 2015 restraining order in light of Mr. Garrett's death. (ECF No. 510.) The government does not object to defendant's motion. (ECF No. 511.)

The parties do not dispute that Mr. Garrett passed away on February 28, 2016. Consequently, the court vacates Mr. Garrett's trial conviction and dismisses the Third Superseding Indictment against Mr. Garrett (ECF No. 94). *Cf. Krantz v. United States*, 224 F.3d 125, 126 (2d Cir. 2000) ("[U]pon receiving notice of a defendant-appellant's death during the pendency of his direct appeal as of right, we normally vacate the judgment and remand to the district court with instructions

¹ The court relieved Mr. Garrett's trial counsel, Kelley Sharkey, Esq. at Mr. Garrett's request on December 16, 2015 and appointed Beverly Van Ness, Esq.

to dismiss the indictment.") (quoting *United States v. Wright*, 160 F.3d 905, 907 (2d Cir. 1998)).

Given that Mr. Garrett's sentencing proceeding will not go forward, the court vacates the November 23, 2015 restraining order (ECF No. 494) related to Mr. Garrett's funds for restitution.

SO ORDERED.

Dated: March 21, 2016
Brooklyn, New York

_____/s/_____
KIYO A. MATSUMOTO
United States District Judge
Eastern District of New York